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In The

Supreme Court of The United States

No. 89-5346

October Term, 1989

WILLIAM J. BRADLEY,

PETITIONER,

-VS-

STATE OF OHIO,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITIONER'S REPLY MEMORANDUM

The position taken by the State of Ohio, in its opposing brief in No. 89-5346, on the First Question presented is contrary to the position it took during the Petitioner's trial and contrary to the state of the law in Ohio.

During Petitioner's trial, the State of Ohio emphasized to the jury that the jury should not allow emotion to enter their findings and if the aggravating circumstances outweighed mitigating factors, the jury had no choice, according to the law it had to impose death. Tr. 1380-81, 1424, 1431. This was again emphasized in the trial court's instruction, Tr. 1438, and the trial court opinion, A-238.

Now the State of Ohio is arguing it is not mandatory and the "shall impose" language does not really mean what it says.

In Ohio, as in Pennsylvania and California, if the aggravating circumstances outweigh the mitigating factors or if no mitigating factors are

presented, the statute mandates death. Ohio Revised Code, Section 2929.03(D)(2)(Page 1988).

When the jury is given this mandatory instruction, and then additionally instructed not to consider sympathy (addressed in Question Number Three), it is not surprising that a death verdict is returned.

The State of Ohio's assertion that a "determination that the mitigating factors are outweighed by the aggravating circumstances is a determination that death is the appropriate penalty. Brief in Opposition, p. 6, fails to allow any consideration of mercy by the jury, and in reality does not allow the jury to make an determination that death is the appropriate penalty for this individual.

This Court has already accepted two cases for next term in which the question presented concerns the mandatory nature of the capital sentencing statutes in Pennsylvania and California. Blystone v. Pennsylvania, 519 Pa. 450, 549 A. 2d 81 (1988), cert. granted, 109 S. Ct. 1567 (March 27, 1989) (U.S. No. 88-6222); Boyde v. California, 46 Cal. 3d 212, 250 Cal. Rptr. 83, 758 P. 2d 25 (1988), cert. granted, 109 S. Ct. 2447 (U.S. June 5, 1989) (No. 88-6613). Since the statutory procedure that will be examined in Blystone and Boyde is identical to Ohio's statutory scheme, Petitioner Bradley respectfully request that his petition for certiorari be granted and argued next term with Blystone and Boyde. In the alternative, Petitioner would request that a decision in his case be delayed until this Court determines the outcome of Blystone v. Pennsylvania and Boyde v. California.

Respectfully submitted,

RANDALL M. DANA
Ohio Public Defender

RANDALL L. PORTER
Counsel of Record
Assistant State Public Defender

KATHLEEN A. McGARRY
Assistant State Public Defender

Ohio Public Defender Commission
8 East Long Street - 11th Floor
Columbus, Ohio 43266-0587

COUNSEL FOR PETITIONER

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CERTIFICATE OF SERVICE

I, Randall L. Porter, a member of the Bar of this Court, hereby certify that on this 13th day of September, 1989, a copy of the foregoing PETITIONER'S REPLY MEMORANDUM was sent by first class U.S. Mail to Anthony J. Celebreeze, Attorney General, State of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43215, and to Lynn A. Grimshaw, Prosecuting Attorney, and R. Randolph Rumble, Assistant Prosecuting Attorney, Scioto County Courthouse, Sixth and Court Streets, Portsmouth, Ohio 45662. I further certify that all parties requiring to be served have been served.

RANDALL L. PORTER
Counsel of Record
Assistant State Public Defender

Ohio Public Defender Commission
8 East Long Street - 11th Floor
Columbus, Ohio 43266-0587

COUNSEL FOR PETITIONER

Sworn to and subscribed in my presence this 13th day of September, 1989.

Kathleen A McGarry
NOTARY PUBLIC

NOTARY PUBLIC STATE OF OHIO
My Commission Has No Expiration Date
R.C. 147.03